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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/589,381	08/15/2006	Annaliesa S. Anderson	21490YP	5673
210 MERCK P O BOX 2000 RAHWAY, NJ 07065-0907	7550 10/04/2010		<div>EXAMINER</div> <div>DEVI, SARVAMANGALA J N</div>	
			<div>ART UNIT</div> <div>1645</div>	<div>PAPER NUMBER</div>
			<div>MAIL DATE</div> <div>10/04/2010</div>	<div>DELIVERY MODE</div> <div>PAPER</div>

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Advisory Action **Before the Filing of an Appeal Brief**

Application No. 10/589,381	Applicant(s) ANDERSON ET AL.
Examiner S. Devi, Ph.D.	Art Unit 1645

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 09/17/2010 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☐ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☒ The Notice of Appeal was filed on 17 September 2010. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☒ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☒ They raise the issue of new matter (see NOTE below);
(c) ☒ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: See Continuation Sheet (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☒ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: None.
Claim(s) objected to: claims 25 and 32.
Claim(s) rejected: claims 1-5, 7, 19-24, 26-31, 33 and 34.
Claim(s) withdrawn from consideration: None.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☐ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: _____
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____
13. ☐ Other: _____.

Continuation of 3. NOTE:

Claim 24 has been currently amended not to depend from claim 19 any more, and now includes the new limitation: The polypeptide immunogen of claim '3, wherein said polypeptide is substantially purified'. The previously presented claim 24 was drawn to the polypeptide immunogen of claim 1 being substantially purified based on its dependency from claim 19 and did not directly include the same polypeptide immunogen description provided in claim 3. The polypeptide immunogen (a) previously claimed in the dependent indefinite claim 3 did not fall within the scope of the polypeptide immunogen sequence of claim 1 differing from SEQ ID NO: 1 'by up to 15 amino acid alterations' since the polypeptide immunogen of previously presented claim 3 included deletion of amino acids 1 and 2 of SEQ ID NO: 1 (i.e., 2 amino acid alterations) plus the addition of 14 or 15 amino acids (i.e., 14 or 15 amino acid alterations) at the carboxyl or the amino terminus of SEQ ID NO: 1 thus totaling more than 15 amino acid alterations. See paragraphs 24(c) and 24(d) of the Final Office Action mailed 03/18/2010. Therefore, the polypeptide immunogen (a) currently claimed in the amended independent claim 3 being 'substantially purified' as now recited in the currently amended claim 24 is new and requires further consideration. Similarly, the new limitation 'substantially purified' added to the currently amended independent claim 31, which was previously directly dependent from claim 27 and indirectly from claim 26 (see paragraph 24(d) of the Final Office Action mailed 03/18/2010), is new in connection with the polypeptide immunogen (a) recited in claim 31 and requires further consideration.

/S. Devi/
Primary Examiner
AU 1645

September 2010